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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MARK TUNG IN
SUPPORT OF CISCO'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S AMENDED
OPPOSITION TO ARISTA'S MOTION
TO AMEND SCHEDULING ORDER OR,
ALTERNATIVELY, TO STAY PATENT
CLAIMS PENDING *INTER PARTES*
REVIEW**

DEMAND FOR JURY TRIAL

DECLARATION OF MARK TUNG

I, Mark Tung, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am of counsel with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco’s Administrative Motion to File Under Seal Confidential Information in Cisco’s Amended Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review in connection with Cisco’s Amended Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review (“Cisco’s Brief”).

3. Cisco’s Brief is non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), Cisco requests to seal the document identified herein only because the information sought to be sealed has been directly designated by Defendant Arista Networks, Inc. (“Arista”) as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order (Dkt. 53):

Document	Portions to Be Filed Under Seal
Cisco’s Amended Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay	As highlighted in the version filed herewith, portions of page: 3

Patent Claims Pending <i>Inter Partes</i> Review	
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5. Cisco's Brief contains quotations from documents produced by Arista. Those documents are included as Exhibits 6 and 8 to the Declaration of Mark Tung in Support of Cisco's Opposition to Arista's Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review. Dkts. 114-1, 114-7, and 114-9. Cisco previously filed an administrative motion to file these exhibits under seal with a supporting declaration and with fully redacted versions and versions sought to be sealed of each exhibit. Dkts. 113, 113-1, and 113-4 through 113-7. Arista designated these documents as "Confidential Business Information" in ITC Investigation Nos. 337-TA-944 and 337-TA-945. Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1, these documents are deemed to have been produced in this case as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Accordingly, Cisco has narrowly redacted only those portions of its Brief containing information so designated by Arista. Specifically, Cisco has redacted the descriptions of and quotations from these Arista's documents in Cisco's brief. Redacted and unredacted highlighted versions of Cisco's Brief are attached hereto.

6. Cisco will serve a copy of this declaration on Arista the same day it is filed. Cisco expects that Arista will file the required supporting declaration in accordance with Civil Local Rule 79-5(e), as necessary, to confirm that the information contained in the above-referenced document should be sealed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in San Francisco, California, on November 19, 2015.

/s/ Mark Tung

Mark Tung (Bar No. 245782)

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Mark Tung (Bar No. 245782).

/s/ John M. Neukom
John M. Neukom (Bar No. 275887)